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CompTel

February 1, 2002

Gloria Blue
Executive Secretary
Trade Policy Staff Committee
ATTN: Section 1377 Comments
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

RE: **BRAZIL, CHINA, COLOMBIA, FRANCE, GERMANY, INDIA, IRELAND, JAPAN, MEXICO, SOUTH AFRICA AND SWITZERLAND:** *WTO General Agreement on Trade in Services*

JAPAN: *May 1998 U.S.-Japan Deregulation Joint Statement*

Dear Ms. Blue:

Pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1988, 19 U.S.C. § 3106 ("Section 1377"), the Competitive Telecommunications Association ("CompTel") hereby responds to the request of the Office of the United States Trade Representative ("USTR") for comments regarding compliance with certain telecommunications trade agreements. CompTel is the premier U.S. industry association representing competitive telecommunications carriers and their suppliers. CompTel has 21 years of experience working actively to advance telecommunications competition in the United States and other countries. With the development of liberalized regulatory regimes and competitive market conditions in a growing number of countries, many of CompTel's members have made significant investments in telecommunications facilities and services outside the United States. CompTel appreciates the opportunity to present its members' experiences in Brazil, China, Colombia, France, Germany, India, Ireland, Japan, Mexico, South Africa, and Switzerland.

CompTel notes in particular two important trade concerns that arise in most of the countries discussed in these comments: (1) pricing and provisioning of local access leased lines; and (2) high fixed-to-mobile termination rates. Because these issues are of concern in so many of the countries discussed in these comments, a general overview of the two issues is set forth here. We also note, however, that there are many other countries not raised in these comments in which many of the same concerns exist, including Belgium, Italy, Luxembourg and Spain.[1] CompTel's members will keep a close watch on developments in these countries in the coming year.

PRICING AND PROVISIONING OF LOCAL ACCESS LEASED LINES

Due to the lack of a competitive supply of local access alternatives across Europe and Latin America, the incumbents' local access lines remain the principal bottleneck facing emerging competitors. The successful delivery of global services to customers in the U.S., Europe, Latin America and the rest of the world will require competitively priced, carrier-grade broadband local access leased lines that are delivered on a timely basis, particularly in large markets like Germany and Brazil.

U.S. emerging competitive carriers procure local access leased lines from incumbents to link their customers to their global networks. Local access leased lines are the major local access facilities utilized by competitive telecommunications providers in Europe and in every competitive market throughout the world. It is estimated that competitive operators across Europe, for example, are currently spending more than 2 billion Euros per year on local access leased lines. However, the regulatory context for leased line access is disappointing. National regulators and incumbents in most European countries have refused to implement the European Union ("EU") Commission's recommendations and directives with respect to leased line access to allow effective competition. In Germany, for instance, the incumbent refuses to provide local access leased lines in a timely, non-discriminatory manner and to provide a viable leased line interconnection product, in violation of EU practice. Similarly, incumbents in other regions have refused to offer cost-oriented and timely provisioning of local access leased lines.

The timely availability of local access leased lines is critical for the development of an effective competitive market for broadband services within the EU Member States, Latin America, and elsewhere. Whereas local loop unbundling will enable residential customers and small and medium enterprises ("SMEs") to achieve cost-effective, high speed access to the Internet, leased lines are vital for government agencies and businesses of all sizes to conduct their internal communications, business-to-business applications and interconnection among operators and service providers. European Commission ("EC") law recognizes the importance of leased lines in both the Leased Line and Interconnection Directives as well as the 2001 Telecom Review.[2]

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[1] Specific problems are as follows: Belgium - Independence of National Regulatory Authority ("NRA") needs to be strengthened, high prices for local access leased lines, and above-cost fixed-to-mobile termination rates; Luxembourg - High prices for local access leased lines, and above-cost fixed-to-mobile termination rates; Italy - Despite the pro-competition decisions of the AGCOM (NRA) on important issues like leased lines and fixed-to-mobile termination, implementation of these decisions has been obstructed by the incumbent and by a lack of clarity in the respective competencies of AGCOM and the Communication Ministry; and Spain – High prices for local access leased lines, and above-cost fixed-to-mobile termination rates

[2] European Commission, Recommendation on Leased Lines Interconnection Pricing in a Liberalised Telecommunications Market, C(1999)3863, 24 November 1999; European Commission, Recommendation Amending Commission Recommendation 98/511/EC of 29 July 1998 on Interconnection Pricing in a Liberalised

Anticompetitive Impact: Incumbents in many markets charge prices that are far above cost for leasing local access lines to their competitors. Increasingly, however, incumbents are engaging in non-price as well as price abuses in the market for local access leased lines. Incumbents in many markets charge prices that are far above cost for leasing local access leased lines to their competitors.

Non-price abuses can be as powerful as pricing abuses but typically are more difficult to detect and to prove. They can be used for both discriminatory and exclusionary purposes. Moreover, they have the cumulative effect of undermining the value of U.S. telecommunications investment abroad. Non-price abuses may take different forms. Such abuse might be implemented in the form of discriminatory provisioning (*e.g.* the incumbent provisions to its affiliates or retail customers more quickly than it provisions to wholesale customers that compete with the incumbent or its affiliates) or in the form of "rising rivals' costs" (*e.g.* the incumbent provisions to its affiliates or retail customers in the same, slow time as it provisions to its wholesale customers, but the delays are felt more substantially by the wholesale customers who in turn are trying to win new customers, in part, by offering superior services).

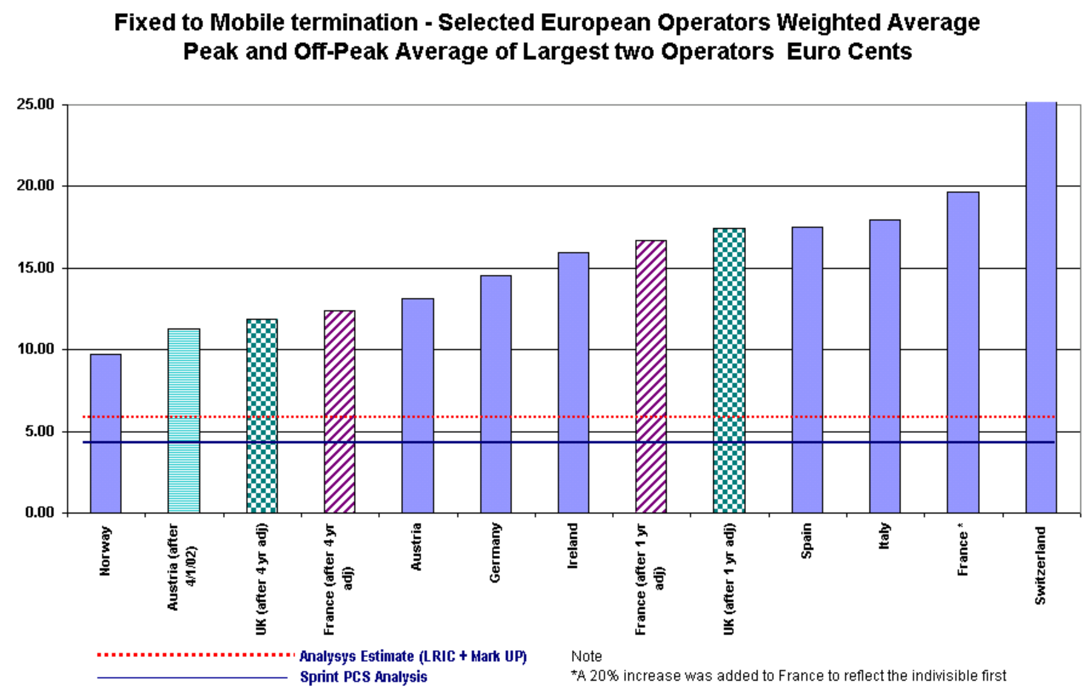
Compliance: In order to comply with their World Trade Organization ("WTO") *General Agreement on Trade in Services* ("GATS") commitments and the Reference Paper ("*Reference Paper*") negotiated as part of the WTO *Basic Telecommunications Agreement*, CompTel submits that the relevant national regulatory agencies ("NRAs") should require incumbent carriers to promptly and fully comply with regulations on nondiscrimination and anticompetitive practices and adopt reporting and monitoring measures with respect to incumbents' provisioning of local access leased lines. Specifically, the NRAs should: (1) require incumbents to report data on leased line provisioning (*e.g.* cost provisioning times, quality of service standards) in a uniform, transparent and auditable way to permit comparison of incumbents' provisioning of leased lines to their affiliates, retail customers and wholesale customers/competitors; (2) analyze such data on a regular basis to identify any anticompetitive practices and develop a European "best practices" for leased lines; (3) determine appropriate standard delivery intervals based on European best practices; and (4) impose uncapped penalties to deter anticompetitive practices in provisioning.

EXCESSIVE FIXED-TO-MOBILE TERMINATION RATES

Fixed-to-mobile termination refers to the rates charged by mobile operators to fixed network operators to terminate voice traffic. Due to poor policy and a lack of regulation, mobile operators have abused their dominant position to turn mobile termination into a "cash cow." Specifically, regulators have failed to ensure that fixed-to-mobile termination rates are "cost-oriented," transparent and reasonable, as required by Section 2.2(b) of the *Reference Paper.*

Telecommunications Market, 20 March 2000; European Commission, Communications from the Commission to the Council, the European Parliament, the Economic and Social Committee and Committee on Regions, Seventh Report on the Implementation of the Telecommunications Regulatory Package, COM(2001) ("Seventh Implementation Report").

Mobile operators across Europe have used the abusive and excessive margins they earn on fixed-to-mobile termination to cross subsidize other activities and to discriminate against fixed network operators. These practices have resulted in significant harm to the business of competitive fixed line operators. Many of the fixed network operators most heavily penalized by this system are U.S. operators or European operators with substantial U.S. investment. As indicated by the chart below, the European countries listed in these comments (Germany, France, Ireland, and Switzerland) all suffer from high domestic fixed-to-mobile termination rates. High mobile termination rates also are a problem in Japan.



Anticompetitive Impact: Discrimination is clearly a problem, particularly where the dominant fixed network operator is also the leading mobile network operator. Dominant fixed/mobile network operators effectively raise their fixed network operator rivals' costs, while unaffiliated mobile network operators take advantage of the price umbrella for fixed-to-mobile termination, and mobile network operators charge their customers far less for "on-net" mobile-to-mobile termination than they charge fixed network operators for fixed-to-mobile termination. Moreover, vertically integrated mobile network operators offer retail fixed-to-mobile prices to corporate Virtual Private Network ("VPN") customers at rates substantially lower than the fixed-to-mobile "interconnection" rate charged to fixed operators.

Negative Impact on U.S. Customers: Indeed, fixed-to-mobile termination rates are so far above cost that it was cheaper to route European domestic fixed-to-mobile traffic to the United States *and back* - a practice typically referred to as "tromboning" – because paying the international settlement rates, themselves above-cost, was cheaper than paying domestic fixed-to-mobile termination rates. These cross-border opportunities have largely ended due to the imposition of mobile surcharges on most international settlement rates and some unilateral blocking actions by European fixed network operators. Regardless of whether one agrees that such practices were appropriate, their existence speaks volumes about the degree to which fixed-to-mobile termination rates exceed actual cost.

Today, Europe's mobile termination problem affects consumers and operators in the United States and other regions as mobile surcharges proliferate - as high as 25 U.S. cents per minute on calls from the United States to Europe. U.S. consumers today pay two to three times more per minute for calls made to mobile phones in Germany and throughout Europe as compared to calls made to fixed line phones.

Compliance: In order to comply with their WTO obligations, CompTel submits that NRAs in their respective markets should implement effective regulatory controls, including cost-oriented pricing, over fixed-to-mobile termination. Such measures are required to adjust for market failures and anticompetitive practices imposed by the mobile operators. To establish cost-oriented fixed-to-mobile termination rates that comply with the relevant WTO commitments, a Long Run Incremental Cost ("LRIC") model should be developed and reductions imposed as a result of the LRIC model should be implemented immediately.

BRAZIL

WTO VIOLATIONS – *GATS Telecommunications Index*

Local Access Leased Lines – Pricing: The rates charged in Brazil for local access leased lines are excessive. The local incumbent operators, which are major suppliers, have been permitted to provide local access leased lines at rates that are far from cost-oriented. Moreover, discrimination by local incumbents is a serious problem, in violation of Section 5 of the GATS *Telecommunications Annex*. For example, it is not uncommon for a local incumbent to charge its wholesale customers 300% more than it charges its retail customers for a comparable 2Mbps local access circuit. Despite complaints filed by competitive carriers, the Brazilian Regulator, ("Anatel"), has made no progress in bringing these rates down to cost-oriented levels.

Local Access Leased Lines – Provisioning: Local incumbent operators' local access leased line provisioning times are far longer than international best practices, in violation of Section 5 of the GATS *Telecommunications Annex*, which requires access to and use of public telecommunications networks and services on a reasonable and non-discriminatory basis. For some emerging carriers, provisioning times range from 80 to 400 days, with an average of approximately 100 days. By contrast, the best practice in Europe is 25 days, and the average of the three best countries is 28 days. The average provisioning time in the United States is 25 days for DS1 lines. These enormous provisioning delays are extremely damaging to emerging carriers' business in Brazil.

Lack of Transparency of Regulator: Anatel's official activities are not sufficiently open and transparent, in violation of the general principles of the GATS and Brazil's own Telecommunications Law (Art. 19 of Lei No. 9.472, July 16, 1997), which requires Anatel to adopt the necessary measures to address the needs of the public interest and the development of the Brazilian telecommunications market. There is a lack of sufficient transparency in the daily operations of the regulatory agency. For example: (1) failure to report (via its website or other public method) *ex parte* discussions with members of the agency regarding pending complaints or proposed regulations; and (2) failure to publish on the agency website any and all complaints against licensees received by the agency. There also exists a public interest need for greater transparency in developing and drafting new regulations, including adequate time to receive and comment on proposed regulations to ensure that nondiscriminatory provisions are adopted. Lack of transparency is a detriment to the business of emerging carriers in Brazil.

CHINA

Upon its accession to the WTO on December 11, 2001, China undertook major commitments to liberalize telecommunications services. China agreed to a six-year schedule for phasing in direct foreign participation in value-added and basic services. China also agreed to be bound by the obligation in Paragraph 5 of the GATS *Basic Telecommunications Reference Paper* to establish an independent, impartial regulatory authority and pro-competitive regulatory regime. These commitments are strategically important for U.S. telecommunications operators because China is already one of the largest telecommunications markets in the world, and is expected to be the fastest growing market for many years to come.

China has taken a number of positive steps to implement its WTO telecommunications services commitments. Prior to its official accession to the WTO, China abolished outdated regulations and began to develop a body of new regulations, including those governing foreign investment and participation in telecommunications services. Furthermore, China announced the split of the fixed-line monopoly, China Telecom Group, into separate north and south geographic entities and licensed new operators in an effort to promote domestic competition. We anticipate that this market liberalization process will accelerate in the post-accession era.

WTO CONCERNS – *Reference Paper*

Implementation of such sweeping reforms will be difficult and inevitably will encounter domestic resistance in some quarters. Therefore, CompTel urges the U.S. Government to place a high priority on working with China to ensure that it fulfills its commitment to establish a regulatory body that is separate from, and not accountable to, any basic telecommunications supplier, and that is capable of issuing impartial decisions and regulations affecting the telecommunications sector. Given that the Chinese Government owns and controls all of the major operators in the telecommunications industry, it is inherently impossible for China to establish a regulator that is truly independent. Nevertheless, it is important that the regulatory body be organizationally separate from telecommunications enterprises, as well as from government agencies that are specifically focused on developing the telecommunications industry. Also, it is important that this regulatory body establish and maintain its impartiality by adopting the following:

- Transparent processes for drafting, finalizing, implementing, and applying telecommunications regulations and decisions;
- *Ex ante* rules for designating major suppliers of telecommunications services and ensuring that those suppliers do not act in an anticompetitive manner (*e.g.*, in addition to the rules on interconnection that the Ministry of Information Industry ("MII") has issued, rules regarding colocation, local access, network unbundling, leasing of private lines, resale, and number portability);
- A defined process – as it has done for interconnection – to decide commercial disputes in an efficient and fair manner between telecommunications suppliers that are not able to reach mutually acceptable agreements;
- A legitimate process for administrative reconsideration of its decisions; and,
- Appropriate procedures and authority to enforce China's WTO telecommunications commitments (*e.g.*, the ability to impose fines, order injunctive relief or the payment of damages, and modify, suspend, or revoke a license).

COLOMBIA

On June 14, 2001 Colombia's Congress ratified *Protocol IV*, bringing Colombia to the threshold of implementing its WTO *Basic Telecommunications Agreements*. However, it has been four years since the agreement came into force and *Protocol IV* remains before Colombia's Constitutional Court awaiting final approval in the ratification process. The delayed ratification and implementation of Colombia's obligations under the *Fourth Protocol* and the *Reference Paper* has operated to frustrate market entry for U.S. carriers. As detailed below, the two primary barriers in Colombia are: 1) failure to adopt transparent licensing rules and to administer those rules in a fair and transparent manner; and 2) continued delay in implementation of its basic telecommunications obligations.

WTO CONCERNS – *Basic Telecommunications Agreement and Reference Paper*

Licensing: In 2000, two years after *Protocol IV* came into force, the Colombian government (the President and Minister of Communications, respectively) issued decrees opening international carrier services to competition and giving the Ministry the authority to grant licenses. In October 2000, the Constitutional Court declared the decrees unconstitutional reasoning that the Colombian government had failed to properly ratify *Protocol IV*. (The GATS agreement had been ratified by Colombia in 1994.) Effectively, the decrees setting forth licensing criteria were null and void and any carrier that had obtained a license thereunder was notified that its license had been revoked. No licensing criteria presently are published or otherwise available in Colombia.

Delayed Implementation: As noted above, implementation has been delayed for four years and may continue to be delayed for various reasons. Subsequent to the Constitutional Court's ruling in October 2000, *Protocol IV* was ratified by the Colombian Congress and signed by the President. Since August 2001, the Agreement has been under review of the Constitutional Court. To date, the Constitutional Court has not rendered a decision. Continued delay may also occur should the Congress create a proposed Commission - to be staffed by members of the incumbent Telecom as well as legislators - to oversee the implementation process and to represent Columbian interests.

FRANCE

WTO VIOLATIONS – *Reference Paper and GATS Telecommunications Annex*

Independence of the NRA: Section 5 of the *Reference Paper* requires that the regulatory body be separate from, and not accountable to, any supplier of basic telecommunications services. However, the independent regulator established by the French Government to oversee telecommunications policy ("ART") effectively shares oversight with the Finance Ministry, which also is the majority owner of the major supplier, France Telecom ("FT"). This arrangement results in confusion and a lack of transparency, in violation of Section 5 of the *Reference Paper*. In addition, the ART is seriously understaffed compared to its European counterparts and does not have the resources to ensure that FT complies with its decisions.

Local Access Leased Lines - Pricing: In France, consistent with EC policy, local access leased lines are included in FT's Reference Interconnection Offer ("RIO"). RIOs are EU terminology used to describe the list of regulated interconnection services that incumbents are required to provide to new entrants pursuant to national and EU laws and regulations. Thus, leased lines are considered interconnection services. Despite the requirements of Section 2.2(b) of the Reference Paper requiring cost-oriented rates, however, the French Government has not required FT to maintain transparent and separate cost accounting for interconnection services. Moreover, FT has refused to provide local access leased line interconnection circuits on a cost-oriented basis. ART has developed guidelines for these rates, but these guidelines are not effectively enforced.

Local Access Leased Lines - Provisioning: FT unilaterally has degraded the quality of service commitments contained in its local access leased line contracts with new entrants, and substantially stiffened the terms of such contracts. Such actions are highly detrimental to the businesses of emerging carriers. These practices also open the door for discrimination in favor of FT's international affiliates, Global One and Equant. Emerging carriers have received credible reports from customers that Global One and Equant are offering substantially better contractual conditions for local access in France (*e.g.* free bandwidth upgrades), which suggests that such discrimination does occur. Due to the lack of transparent reporting requirements, however, it is difficult or impossible to confirm such reports. Such discrimination, lack of transparency and unreasonable delays in provisioning clearly violate Sections 2.2(a) and (b) of the *Reference Paper*.

In addition to the *Reference Paper*, Section 5(a) of the GATS *Telecommunications Annex* requires France to ensure that service suppliers of other WTO members have access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions for their provisioning of value-added services. However, France has failed to prevent FT from provisioning local access leased lines, a fundamental part of the public telecommunications transport network, to providers of value-added services in France on an unreasonable and discriminatory basis.

Fixed-to-Mobile Termination Rates: Regulation of the mobile sector in France - and in Europe generally – has been ineffective in violation of Section 2.2(b) of the *Reference Paper*. In France, the NRA designated both Orange France and SFR as having Significant Market Power ("SMP") in the National Interconnection Market, with a legal obligation to provide cost-oriented carrier grade interconnection (fixed-to-mobile termination) to fixed operators. In response, the ART mandated a 20% reduction in fixed-to-mobile rates in 2001, and announced a 40% reduction over four years, starting in March 2002. While leading to some reductions, the four-year transition means that fixed-to-mobile rates will remain far above cost for an unacceptably long period. Moreover, mobile operators routinely discriminate against fixed network operators, which results in significant damage to U.S. network operators and customers.

GERMANY

In what amounts to testimony to the consistent lack of progress in the circumstances of competitive carriers in Germany, the situation described in CompTel's comments in USTR's 2001 Section 1377 Review has not significantly changed. CompTel at that time commented on the worsening market condition for competitive carriers in Germany, a trend that accelerated in 2001 and led to the exit of numerous entrants yet has not resulted in substantial policy changes which might reverse this trend. Likewise, as noted in comments of earlier years, the intermingling of interests between the German Federal Government, its telecommunications regulator ("RegTP"), and Deutsche Telekom ("DTAG") remains a serious problem.

Therefore, CompTel must once again express its concern about the lack of decisive improvements in the German market. Formidable barriers to entry remain, which bear directly on Germany's trade commitments under the GATS and *Reference Paper*. Moreover, in view of recent calls for the removal of Germany from the USTR's periodic Section 1377 review process, CompTel maintains that the following observations are both timely and necessary.

Two of the most critical telecommunications policy issues in Germany that concern CompTel's members are: (1) leased line provisioning, and (2) fixed-to-mobile termination rates. Regarding these two concerns, our members face delays in provisioning of local access leased lines and high fixed-to-mobile termination rates, both of which undermine the competitiveness of competitive carriers vis-a-vis incumbent operators. With regard to fixed-to-mobile termination, fixed line customers in the United States and Europe are unfairly penalized by the high prices charged for this access service. As set forth below, the German regulator, RegTP, has failed to properly deal with leased line issues, and has not dealt at all with the issue of fixed-to-mobile termination rates.

WTO VIOLATIONS – *Reference Paper and GATS Telecommunications Annex*

Local Access Leased Lines – Provisioning: As has been observed in earlier years and as might be repeated once again, DTAG's obstructionism has burdened competitive carriers with serious obstacles as well as discouraged potential new entrants. The incumbent's delay tactics in provisioning leased lines, for instance, have persisted through all market segments including mobile communications, WLL (Wireless Local Loop) and online services. RegTP has taken little action to ensure prompt delivery of local access leased circuits. DTAG's average delivery interval vis-à-vis its competitors for the Fourth Quarter of 2001 was 93 calendar days. Moreover, anecdotal evidence clearly demonstrates that DTAG treats its competitors less favorably than its affiliates and itself in the provisioning of local access leased lines. RegTP issued a decision in October 2001 after a one-year proceeding relating to the abuse of dominance complaint of Riodata (a competitive carrier in Germany) but that decision only mandated new lead times relating to one specific carrier leased line product. In addition, the decision only required delivery times of between 8 weeks and 6 months - time periods that are far longer than EU best practice values. Moreover, RegTP did not impose any penalties or reporting obligations on DTAG. This ruling is clearly insufficient in scope and remedy to address competitors' concerns.

On October 8, 2001, WorldCom/UUNET filed a complaint with RegTP alleging abuse of a dominant position and discrimination by DTAG. The complaint includes requests for service level agreements ("SLAs"), penalties, and DTAG reporting requirements for *all* DTAG leased line products. In addition, BT Ignite filed a complaint regarding two specific leased line products. DTAG responded in December 2001 and other operators submitted comments in reply to DTAG on January 16, 2002. RegTP will now decide whether to open a formal proceeding to address the matter.

The German Government's failure to resolve these issues places it in violation of several *Reference Paper* provisions and the GATS *Telecommunications Annex*. Section 2.2 of the *Reference Paper* requires Germany to ensure, among other things, that interconnection is provided with a major supplier in a timely fashion and under terms and conditions that are non-discriminatory. The European Commission has recognized that local access leased lines – from the customer's premises to the new entrant's point of presence – are interconnection products. Germany has failed to require the incumbent to file a Reference Interconnection Offer containing adequate and nondiscriminatory leased lines offers. Germany therefore is in violation of the *Reference Paper*.

In addition, Section 1.1 of the *Reference Paper* requires Germany to maintain measures that prevent a major supplier from engaging in or continuing anticompetitive practices. In Germany, however, the regulator has failed to ensure the prevention of anticompetitive practices by its major supplier DTAG in the provisioning of local access leased lines. Specifically, RegTP has failed to intervene, even though DTAG's provisioning terms for local access leased lines are undermining competition. DTAG is the dominant supplier of local access leased lines, has been formally designated to be the dominant operator in the German leased line market, and has the regulatory obligation to provide non-discriminatory provisioning of leased lines to other operators.

Finally, Section 5(a) of the GATS *Telecommunications Annex* requires Germany to ensure that service suppliers of other WTO members have access to and use of public telecommunications transport networks and services on reasonable and nondiscriminatory terms and conditions for their provision of value-added services. Germany, however, has failed to prevent DTAG from provisioning local access leased lines, a fundamental part of the public telecommunications transport network, to providers of value-added services in Germany on an unreasonable and discriminatory basis.

Fixed-to-mobile termination rates: Germany also has failed to ensure that fixed-to-mobile termination rates are nondiscriminatory, cost-oriented, transparent and reasonable as required by Section 2.2 of the *Reference Paper*. In Germany, DTAG's D1 and Vodafone's D2 each have a market share of over 40% in the retail mobile market and therefore also in the market for interconnection to mobile networks. Despite these high market shares, neither DTAG's D1 nor Vodafone's D2 have been designated by RegTP as having Significant Market Power ("SMP") with a legal obligation to provide cost-oriented, carrier grade interconnection (fixed-to-mobile termination) to fixed operators. In France, by contrast, the major mobile providers have been declared SMP operators.

As shown in the chart on page 4, however, fixed-to-mobile termination rates in Germany are two to three times above LRIC-based prices, and more than 40% higher than the "best practice" rates in key markets. European and U.S. consumers pay up to 350% more for fixed-to-mobile calls than for mobile-to-mobile calls. For example, U.S. consumers currently incur an additional surcharge of 17 U.S. cents per minute when calling mobile users in Germany. Excessive fixed-to-mobile charges cost consumers over 3.5 billion Euros in 1999.

CompTel believes that there is also evidence that for purposes of fixed-to-mobile termination, Germany has violated Section 1 of the *Reference Paper*, which requires the maintenance of appropriate measures "for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging or continuing anticompetitive practices." Under Section 1.2, "engaging in anticompetitive cross-subsidization" is specifically included as an anticompetitive practice.

Such anticompetitive subsidization occurs today in Germany. The business situation facing fixed network operators with respect to fixed-to-mobile termination has deteriorated dramatically since January 2001. The "retail" price for fixed-to-mobile calls offered by vertically integrated fixed/mobile operators in the German market is close to or in some cases below the "wholesale" interconnection rate. For example, DTAG/D1 now offer retail fixed-to-mobile minutes in the context of bundled offers to corporate closed user groups or large customers at rates below the interconnection rate. These practices distort the market in favor of mobile traffic. Fixed operators, including some CompTel members, are required either to lose those customers or sell at a loss.

DTAG's New Broadband Monopoly: DTAG controls the second-largest number of DSL connections in the world – some 2.2 million. This substantial number is somewhat less impressive when one considers that not only does DTAG not have serious competition from cable companies or wireless service providers, but it essentially controls the terms on which its competitors may lease the customer loop. Building on its earlier strategy of price-dumping in the narrowband Internet access market, there is little evidence that the regulator will be able to prevent a repeat performance in the broadband DSL market. Until the spring of this past year, DTAG had offered a flat-rate dial up plan available exclusively through its wholly-owned ISP subsidiary and enjoyed considerable success with the consumer – particularly since competitors were unable to match the terms offered. DTAG simply refused to make flat-rate local calling plans available to competitors on a wholesale basis and persisted in its refusal in the face of lawsuits by AOL, among others, as well as belated regulatory pressure.

This unfair practice was not ended by regulatory intervention, but ceased only when DTAG's apparent losses from this offering began to mount faster than the incumbent judged worthwhile. This same strategy is now being repeated for broadband services, with DTAG offering bundled rates to customers of its ISP while obstructing and overcharging competitors. While a rate-setting proceeding for DSL services has been under way since March of last year when the regulator issued a decision determining DTAG's rates to be below-cost, DTAG succeeded in stalling any changes until recently when it announced that it would raise its retail rates considerably, though still insufficient to recover the actual cost of providing service as compared to its wholesale pricing to competitors. Only a few days later, RegTP announced that it was satisfied with DTAG's price increase and terminated the DSL proceeding. The timing of this action appears to be coordinated with DTAG. This is another example of RegTP submitting to DTAG pressure, and not taking further action to level the playing field for the provision of enhanced services. The result is a new monopoly for DTAG in the DSL market, a market which did not even exist when DTAG's monopoly rights ended in 1998. In fact, DTAG was able to transfer its former legal and now still existing *de facto* monopoly in the customer local loop into the new market for DSL services without interference by RegTP, despite a regulatory environment in force since 1998 that nominally supports fair competition for telecommunications in Germany

The Regulatory Framework Remains Insufficient: Because former monopoly providers can be expected to defend their market share and to hamstring their competitors as well as they might, a strong and proactive regulator is needed to counteract these persistent anti-competitive tendencies. Unfortunately, despite Germany's *Reference Paper* commitment to establish an adequate, independent and impartial regulator, RegTP continues to be overburdened by this task, taking action too tentatively and slowly, without imposing penalties on DTAG where the incumbent obstructs regulatory decisions, to forestall the impairment of fair and open competition before substantial harm is caused. Most prominently, gaps in the legal framework as well as a general lack of transparency caused by stringent trade secret practices as well as a lack of administrative openness, in addition to the regulator's hesitancy to actually enforce binding decisions, need to be remedied. For instance, DTAG is trying to keep market shares from being reported and evaluated on a nationwide basis as mandated by the German Telecommunications Act. Instead, it wants to restrict evaluations to regional markets or even certain product groups in hopes that it might no longer be considered the major supplier within such artificially narrow segment.

INDIA

CompTel is encouraged to see that India has accelerated the opening of its international long-distance market by 2002, two years ahead of the WTO commitment of 2004.

WTO CONCERNS – *Reference Paper*

Certain barriers to competition, however, continue to exist. For example, the exorbitant licensing fee, the build-out obligations, and other financial conditions applicable to international long distance operators constitute serious barriers for new market entrants. The current licensing fee is approximately $5.21 M. In addition, licensees will be required to post a performance bond of equal value ($5.21 M) and to pay an annual fee of 15% of net revenues. In addition, new entrants will be required to install an international gateway switch and establish a minimum of four regional points of presence ("POPs") within India. Switchless service resale will not be permitted for a minimum of three years after the international services market opens on April 1, 2002.

The Indian Congress is considering legislation that would create a stronger and more independent regulatory body. Although passage of the new legislation is expected soon, the new regulatory body will not have time to put into place strong dominant carrier and transparent interconnection regulation before international competition begins.

The Government of India has initiated an Initial Public Offering ("IPO") to reduce its equity in the incumbent international carrier, VSNL, and turn over management control to the new owners. This will be a positive development when completed. Nonetheless, the Government of India will retain majority ownership and control of the incumbent local access and national long distance carriers, BSNL and MTNL, which will be providing much of the essential last-mile inputs to the new international carriers.

Therefore, CompTel urges the U.S. Government to place a high priority on working with India to ensure that it fulfills its commitments to establish a regulatory body capable of issuing impartial decisions and regulations affecting the telecommunications sector focusing on the following:

- Transparent processes for drafting, finalizing, implementing, and applying telecommunications regulations and decisions;

- *Ex ante* rules to designate major suppliers of telecommunications services and to ensure that major suppliers do not act in an anticompetitive manner; and,

- Appropriate procedures and authority to enforce India's WTO telecommunications commitments (e.g. the ability to impose fines, order injunctive relief or the payment of damages, and modify, suspend, or revoke a license).

IRELAND

Ireland suffers from some of the highest local access leased line rates in Europe, as well as the longest provisioning time in Europe. In addition, fixed-to-mobile termination rates are extremely high.

WTO VIOLATIONS – *Reference Paper and GATS Telecommunications Annex*

Local Access Leased Lines – Pricing: Despite the requirements of Section 2.2(b) of the *Reference Paper* for cost-oriented rates, the rates charged in Ireland for local access leased lines are among the highest in the world. Eircom, the major supplier, provides local access leased lines at rates that are far from cost-oriented and, in fact, approximate the retail rates that Eircom charges its retail customers. For a 5 km, 2 Mbps local access circuit, the annual charge is more than 12,000 Euros (3-year contract). By comparison, a similar circuit in Sweden costs less than 3,000 Euros a year. The average rate charged by a Bell Operating Company in the United States is the equivalent of just less than 4,000 Euros a year. The Irish Regulator ("ODTR") has indicated that it is concerned about this issue, but no progress has been made in bringing these rates down to cost-oriented levels.

Local Access Leased Lines – Provisioning: Eircom's local access leased line provisioning times are among the worst in Europe, in violation of Section 2.2(b) of the *Reference Paper*, which requires delivery in a "timely fashion." ODTR's failure to act forcefully also violates Section 1.1 of the *Reference Paper*, which requires Ireland to maintain measures that prevent a major supplier from engaging in or continuing anticompetitive practices. Within the last 18 months, delivery times had been as high as 89 days. While this has since improved with delivery times of between 65-75 days, due in no small part to the efforts of the ODTR, CompTel believes that there is still substantial room for improvements to be made. Indeed, the best practice in Europe is 25 days, and the average of the three best countries is 28 days. The average provisioning time in the United States is 25 days. These provisioning delays are extremely damaging to the business of emerging carriers.

Finally, Section 5(a) of the GATS *Telecommunications Annex* requires Ireland to ensure that service suppliers of other WTO members have access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions for their provision of value-added services. Ireland, however, has failed to prevent Eircom from provisioning local access leased lines, a fundamental part of the public telecommunications transport network, to providers of value-added services in Ireland on an unreasonable and discriminatory basis.

Fixed-to-Mobile Termination Rates: Fixed-to-mobile termination rates in Ireland are far from cost-oriented, in violation of Section 2.2(b) of the *Reference Paper* and Section 1 of the *Reference Paper*. In particular, Eircom, the major supplier for mobile termination services in Ireland, charges fixed operators more than 15 Eurocents – four to five times the LRIC rate - to terminate calls on their mobile network. Moreover, this rate is higher than Eircom's retail charge to certain customers, which is approximately 11 Eurocents. Unfortunately, the ODTR has made little progress on this issue since July 2000, when it announced that it would be examining the situation. This discrimination against fixed network operators results in significant damage to U.S. network operators and customers.

JAPAN

Japan has made significant strides in market liberalization and development since the *May 1998 U.S.-Japan Deregulation Joint Statement*, and the entry into force of its WTO Commitments. However, more work needs to be done to: (1) effectively regulate NTT as dominant; (2) remove burdensome regulation on non-dominant carriers; (3) reduce excessive fixed-to-mobile termination rates; and (4) introduce a truly independent regulator.

WTO VIOLATIONS - *Reference Paper, GATS Telecommunications Annex and May 1998 U.S.-Japan Deregulation Joint Statement*

Failure to Deter Anticompetitive Practices: The Ministry of Public Management, Home Affairs, and Posts and Telecommunications ("MPHPT") and the Japan Fair Trade Commission ("JFTC") have issued new guidelines to promote competition in telecommunications reflecting the "pro-competitive" principles set forth in the Revised Telecommunications Business Law (June 2001) and the Anti-Monopoly Act ("AMA"). Although the new Law authorizes MPHPT to accord "asymmetrical regulation" on NTT because of its control of bottleneck facilities, there is strong political pressure to exempt NTT from minimal dominant carrier regulation. An example is the Reuters' wire service report of December 19, 2001 quoting the Japanese Minister of Finance as having called for the quick removal of "the rules restricting the activities of NTT" due to the decline in its stock price.

The MPHPT's focus in preventing anticompetitive practices is to keep essential facilities from becoming controlled by a dominant supplier. As a result of this focus, however, all facilities-based carriers, regardless of their market power, are required to submit the terms and conditions for their pricing of data, Internet, and leased line services to MPHPT. What is lacking in the present approach is that the MPHPT is not required to take into consideration the capability of NTT to leverage its dominance in the local access market to other upstream service markets. So long as asymmetrical regulation is lacking, NTT is able to enter new markets with little or no regulatory hurdles. The most critical need is for a stronger commitment on behalf of both MPHPT and the JFTC to enforce the rules in a manner that promotes effective competition.

Excessive Fixed-to-Mobile Termination Rates: Currently, fixed network operators subsidize NTT DoCoMo's mobile network through excessive mobile termination fees. The current rate structure for fixed-to-mobile termination is inconsistent with the obligations taken by Japan in Section 2.2(b) of the *Reference Paper* to ensure "cost-oriented" interconnection rates. As more international telephone calls from the United States terminate on a Japanese cellular network, the effect of such excessive rates inflicts significant economic harm on U.S. carriers and their customers.

Burdensome Licensing Regime: Japan's licensing regime is based on whether a service provider owns its facilities (Type I) or leases facilities (Type II) to provide services. Such a regime makes it difficult for a new entrant carrier to offer end-user services by using a combination of its own infrastructure and leased facilities from other providers. Under the present system, a Type I carrier is authorized to lease services from other Type I carriers to serve customers within its approved "operational areas." For customers whose place of business is outside an approved "operational area," a new-entrant Type I carrier must submit for approval detailed documentation to the MPHPT that includes business plans, financial information, and network topology. This review process is time consuming and non-transparent.

The requirement to obtain the MPHPT's prior approval before moving into new operational areas favors the incumbent, which was able to build its ubiquitous network during its monopoly days, and places the new Type I entrant, whose network may pass only a small percentage of businesses, at a significant disadvantage. In today's business environment, a carrier must be able to obtain "last-mile" access to all of its customers' locations, many of which are served only by the incumbent's facilities, to effectively offer its services to customers.

In December 2001, the MPHPT published a report entitled "Study Group on New Business Methods and Grand Design of the Competitive Environment for the New Information and Communications Era," which sets forth a vision of the future where infrastructure and services such as the Internet, telecommunications and broadcasting are converged. The MPHPT recognized that such a broadband future requires a review of the Type I and Type II licensing regime now in place. CompTel is encouraged that relief from the burdens of the current licensing regime may be forthcoming if these MPHPT recommendations are implemented in a timely manner.

Absence of Independent Regulatory Authority: Japan committed under the *Reference Paper* to establish an impartial regulatory body to implement the pro-competitive regulatory principles set forth in that document. Although Japan played a leading role in promoting international support for the *Reference Paper*, the Japanese Government has failed to create an independent regulatory body with sufficient autonomy to exercise effective oversight over the sector. The fact that both telecommunications policy and regulatory responsibilities reside in the same Cabinet Ministry, the MPHPT, raises questions regarding the transparency of the regulatory process when dealing with the dominant carrier, NTT, in which the government remains the major shareholder.

The recent initiative to give added responsibilities to the Japan Fair Trade Commission to use its powers under the AMA to curb anticompetitive actions is positive. But the ability of the JFTC to act effectively is questionable, given its role as a subordinate body within the same Ministry that has overall responsibility for the telecommunications sector. A more effective system would be to set up the JFTC as an independent entity.

MEXICO

Over the past four years, the U.S. Government has encouraged Mexico to take meaningful measures to conform to its WTO commitments for basic telecommunications services. Despite a host of formal and informal bilateral meetings, several Section 1377 citations, two WTO consultations, and one WTO panel request, little progress has been achieved. Significant problems remain in two key areas.

WTO VIOLATIONS – *Reference Paper*

International Services: Market access barriers still exist in Mexico that protect Telmex's high settlement rates. First, Mexico explicitly prohibits alternative commercial arrangements, commonplace in today's international market, which would dramatically reduce the rates U.S. carriers pay for call termination in Mexico. In addition, under Mexico's WTO *Reference Paper* commitments, U.S. carriers are entitled to cost-oriented rates at any technically feasible point in Telmex's network. The existing approved settlement rate of 19 U.S. cents per minute, as compared to a conservative 4 U.S. cents per minute cost estimate, is clear evidence that this commitment has not been met. Furthermore, rules in place in Mexico give Telmex complete control over negotiating settlement rates, which guarantees Telmex control over the level of these rates. Removing these barriers is required for Mexico to meet its cross-border commitments, and would lower calling prices to the benefit of U.S. consumers and businesses.

Domestic Services: Mexico has not enforced dominant carrier regulations on Telmex. Although new dominant carrier rules were adopted on September 8, 2000, the Mexican regulator ("Cofetel") has done little to enforce these rules. Furthermore, Telmex has appealed these rates in court, further delaying any effective implementation. This lack of enforcement only empowers Telmex to act in an anticompetitive manner to increase competitors' costs, and decelerate and degrade potential competitors' new service offerings. Telmex still maintains above-cost domestic interconnection rates, especially for calls that terminate outside the area directly served by the competitive carrier purchasing this "off-net" access. Importantly, although by its own rules Cofetel is required to intervene in setting this rate, no such action has been taken. Mexico also has failed to provide unbundled interconnection rates as required by the *Reference Paper*. This unbundling would spur greater competition, by allowing alternative providers to use only the network elements required to provide services to customers.

SOUTH AFRICA

South Africa's WTO commitments require it to open its market for value-added network services ("VANS") in South Africa.[3] South Africa has been in violation of this commitment since September 1999 when the incumbent monopoly telecommunications operator in South Africa, ("Telkom"), began denying new telecommunications facilities to VANS suppliers. Notwithstanding that USTR cited South Africa in its 2000 and 2001 Section 1377 Reports, Telkom remains steadfast in its refusal to lease lines to VANS suppliers that are necessary for the provision of their services.

Although the regulator, ("ICASA"), has taken some steps to require Telkom to comply with South Africa's WTO commitments, these steps have been ineffective for a number of reasons, including: (1) ICASA's inability to finalize and enforce its decisions against Telkom; and (2) the Ministry of Communications' continued favoritism of Telkom, which is 70% owned by the South African Government, as illustrated most recently by the Amendment Bill to the Telecommunications Act of 1996. As originally drafted, this legislation would have put competitive VANS suppliers out of business. Although competitive VANS suppliers were able to eliminate some of the most egregious provisions from the legislation, the bill, as passed, fails to fulfill South Africa's WTO commitment to open basic telecommunications resale to competition by 2003[4], and reduces the role of the independent regulator. It also could be mistakenly read to redefine Customer Premise Equipment ("CPE") as a monopoly service.

WTO VIOLATIONS – *GATS Value-Added Commitments and Telecommunications Annex*

Telecommunications Facilities for VANS: South Africa committed to open its market for VANS under the 1994 WTO GATS. Prior to making these commitments, and following their entry into force, competitive suppliers of VANS enjoyed reasonable and nondiscriminatory access to the network of the monopoly telecommunications supplier, Telkom. Competitive VANS have provided their services to customers in South Africa since 1985, and presently serve a host of small, medium and large business customers, including leading companies in many key sectors of South Africa's economy, such as the banking, brewing, manufacturing, minerals and mining industries.

The use of telecommunications facilities to form backbone networks and to provide services to customers is central to the provision of VANS, which combine telecommunications facilities provided by an underlying carrier with added value to produce a new service. Competitive suppliers of VANS in South Africa are required to lease from Telkom all telecom facilities used to provide VANS to their customers, including backbone facilities and customer access lines.[5]

In mid-1999, however, Telkom unilaterally began to deny access to the new telecommunications facilities VANS suppliers require to serve their customers, although Telkom

[3] WTO (15 April 1994) Schedule of Specific Commitments (South Africa) GATS/SC/78, (94-1075).
[4] GATS Article XVI; Specific Commitments, GATS/SC/78/suppl. 2 April 1997.
[5] *See id.* – Telkom to retain monopoly on all facilities and basic voice services until December 31, 2003.

continued to provide those facilities for its own VANS services. Telkom continues to deny new telecommunication facilities to competitive VANS suppliers.

South Africa's failure to ensure that non-South African VANS suppliers receive the public telecommunications facilities they require to provide VANS services in South Africa, and to prevent Telkom from discriminating against those suppliers in favor of its own competing services, is contrary to South Africa's WTO obligations, which include commitments to provide market access and national treatment for VANS services. (*See* South Africa, Schedule of Specific Commitments, WTO Doc. GATS/SC/78, Apr. 1994, pp. 12-13.) South Africa is also required under GATS Article 8 to prevent a monopoly supplier such as Telkom from acting in a manner inconsistent with South Africa's obligations or from abusing its monopoly position when competing in the supply of a service outside the scope of its monopoly rights. Moreover, under the WTO *Telecommunications Annex*, South Africa is required to ensure that non-South African VANS suppliers receive "access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions."

As USTR stated in the 2001 Section 1377 Annual Review, "The refusal of South Africa's monopoly basic telecommunications provider, Telkom, to provide access to and use of its network for value-added network service providers greatly undermines the ability of such businesses to operate."[6] USTR urged the South African Government to "ensure that providers of such services can operate consistent with South Africa's WTO obligations"[7] and specifically "to reinstate and enforce a recent ruling prohibiting Telkom from denying access to VANS without explicit authorization of the regulator."[8] Disappointingly, the South African Government has taken no such action.

Amendment to the Telecommunications Act of 1996 (Amendment Bill): In November 2001, President Mbeki executed an Amendment Bill to the Telecommunications Act of 1996 ("Amendment Bill") that significantly reduces the current rights of competitive VANS and increases the power and control of the government-owned monopoly incumbent public telephony operator, Telkom. Additionally, the Amendment Bill reduces the powers of the independent regulator, ICASA, in favor of the Ministry of Communications – the government entity responsible for the government's 70% equity ownership interest in Telkom.

Lack of Resale in South Africa: Section 32A of the Amendment Bill states that resale of basic telecommunications services will not be authorized until 2005 at the earliest. This effectively establishes exclusivity for the partially government-owned second PSTN operator (Second National Operator) – to be licensed after May 2002 - to resell Telkom's facilities until 2005 at the earliest. This clearly violates an explicit commitment by South Africa in its schedule of basic telecommunications commitments (GATS/SC/78/suppl.2, April 1997), to permit resale by 2003. Lack of a resale alternative for VANS prolongs the current high costs for both leased lines and international bandwidth incurred by VANS competitors in South Africa.

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[6] Office of the U.S. Trade Representative, *Annual Review of Telecommunications Trade Agreements Highlights Concerns in Columbia, Mexico, South Africa, and Taiwan*, Apr. 2, 2001.
[7] *Id*.
[8] *Id., USTR Fact Sheet, Background on the 2001 Section 1377 Review*.

Lack of Independent Regulator: Several provisions in the Amendment Bill compromise the independence of the regulator and the likelihood of it making impartial decisions by: (1) transferring regulatory functions from ICASA to the Ministry of Communications, the government agency responsible for managing the government's 70% equity ownership interest in Telkom; and (2) reversing prior ICASA rulings. Under Sections 35 and 35A, the Minister of Communications replaces the impartial regulator, ICASA, as the entity responsible for all licensing decisions. Section 65(4) transfers administration of the Universal Service Fund from ICASA to the Minister. Under Section 43(10), the Bill limits the mandate for interconnection agreements to 5 years by authorizing a single party to the agreement to trigger a renegotiation of some or all of the terms of the agreement – such a provision ignores current interconnection guidelines adopted by the regulator in 2000. Overall, Sections 43 and 44 of the Amendment Bill override the Interconnection Regulations that were approved previously by SATRA (the regulatory agency that preceded ICASA).

This transfer of key regulatory functions from ICASA to the Minister seriously damages the existence of an independent and impartial regulator, in violation of South Africa's *Reference Paper* commitments.

Potential Re-monopolization of CPE in South Africa: Section 36A(1)(h) of the Amendment Bill expands the definition of Public Switched Telecommunication Service ("PSTS") to include "the provision, repair and maintenance of equipment located on a customer's premises ("CPE") and any other telecommunications apparatus of any kind." Although VANS suppliers have received assurances that this language does not give Telkom and the Second National Operator exclusive rights to provide CPE, there is a danger that this language could lead to the re-monopolization of CPE, in violation of South Africa's commitment to ensure access to and use of terminal or other equipment that attaches to the public telecommunications transport network under section 5(b)(i) of the GATS *Telecommunications Annex*. South Africa must ensure that this provision of the Amendment Bill is not used to impede VANS suppliers in South Africa from providing equipment and services that are necessary to the provision of their services.

SWITZERLAND

WTO VIOLATIONS – *Reference Paper and GATS Telecommunications Annex*

As Switzerland is not an EC member, EC directives and regulations are not binding for Switzerland. However, EC directives are often used as guidelines to amend and revise Swiss law.

Local Access Leased Lines – Pricing: Despite the requirements of Section 2.2(b) of the *Reference Paper* for cost-oriented rates, the rates charged in Switzerland for local access leased lines are extraordinarily high. The root cause is the Swiss Government's undermining of the authority of the NRA. In October 2000, the NRA ordered Swisscom to provide local access leased lines at LRIC-based rates, and on a non-discriminatory basis. Swisscom appealed this decision, and the Federal Court ruled one year later (October 2001) that the NRA did not have competence to take such a decision. The end result is that Switzerland is failing to comply with its WTO obligations. The aforementioned Federal Court decision is also seen as prejudicial of the pending unbundling decision.

Unbundled Local Loop: Under Section 2.2(b) of Switzerland's Schedule of Specific Commitments (GATS/SC/83/Suppl.3/Rev.1 (28 Jan 98)), interconnection is to be ensured "in a timely fashion...and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided...."

Nonetheless, despite the best efforts of the NRA, which issued an injunction in November 2000 and ordered the incumbent to immediately implement bitstream access and draft a full unbundling Reference Interconnection Offer, the Federal Court overruled this injunction in March 2001. Currently, a main decision by the regulator on unbundling is pending and expected at the end of January. Taking the recent Federal Court ruling on leased lines into account, the NRA could decide against unbundling by accepting the Federal Court's position regarding leased lines, claiming that the NRA does not have the competence for a positive ruling. If the NRA decision supports unbundling, it once again will be appealed by Swisscom and most likely overruled.

Emerging carriers believe that these decisions reflect bias on the part of the Government towards Swisscom, which is still 65.5% government-owned. Although the decisions relied on Article 11 of the Swiss Telecommunications Act ("Telecoms Act"), which requires dominant operators to provide interconnection to other operators without discrimination and in accordance with the principles of a transparent and cost-related price policy, it appears that the Federal Court continuously chooses to interpret the Telecoms Act in the incumbent's favor. In December 2000, the Swiss parliament rejected a motion by one of its members to introduce in the Swiss Telecommunications Act an explicit obligation on the incumbent, Swisscom, to unbundle the local loop.

An amendment of the current Swiss telecommunications legislation is required to bring about unbundling of the local loop and non-discriminatory availability and pricing of leased lines. Given the fact that the Swiss parliament already has rejected a motion for such an amendment in December 2000, CompTel submits that Switzerland should be made aware of the clear violations of its WTO commitments to ensure that it permits local loop unbundling.

Fixed-to-Mobile Termination Rates: Fixed-to-mobile termination rates in Switzerland are far from cost-oriented, in violation of Section 2.2(b) and Section 1 of the *Reference Paper*. In particular, Swisscom's mobile affiliate, the major supplier for mobile termination services in Switzerland, charges fixed operators more than 25 Eurocents - five to six times the LRIC rate - to terminate calls on its mobile network. This discrimination against fixed network operators results in significant financial harm to U.S. network operators and customers.

CONCLUSION

For the reasons described above, CompTel urges the U.S. Government to work aggressively with the Governments of Brazil, China, Colombia, France, Germany, India, Ireland, Japan, Mexico, South Africa, and Switzerland, to open their markets for competition and to ensure fair and non-discriminatory market conditions in accordance with their respective international trade commitments.

Sincerely,

Carol Ann Bischoff
Executive Vice President &
General Counsel